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Office Memorandum • UNITED STATES GOVERNMENT

TO : General Counsel

DATE: 1 March 1951

FROM :

STATINTL

SUBJECT: Letter from Mr. [] dated 11 February 1951, Re Tax Deduction for Expenses of Using Specially-equipped Automobile.

OGC Has Reviewed

1. In answer to your request for a "ruling" on the problem presented in subject letter, the following comments are presented for your information.

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2. [] indicated that he had claimed a deduction on his personal U. S. Federal income tax return for the proportionate expense of using his specially-equipped automobile for business purposes, and that the Bureau of Internal Revenue has stated that "the cost of operating automobile due to injury sustained in war is a personal expense and not an allowable deduction."

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3. The car was given to [] (79th Congress, 2d Session), the First Supplemental Appropriation Act of 1947. While the value of the gift itself is not taxable (I.T. 3855 1947-1CB 9; P 88.205 CCH), there was no legislative sanction of special privileges regarding its use. This does not appear to be inadvertence or pre-meditated silence since the Act specifically states that funds are not made available for the costs of repair, maintenance, or replacement of the car.

4. Deductions available to the individual taxpayer are based on expenses related to business or the production of income and applied to gross income, or those expenses of a personal nature (charitable contributions, medical expenses, etc.) applied to adjusted gross income. Within the general provisions regarding business expenses, some special rules attach to salaried employees. The traveling expenses of a taxpayer receiving salary as full compensation for services may be acceptable deductions. If the taxpayer is not reimbursed, the expense is deducted from gross income (Reg. 111, § 29.23 (a)-2 (a)). If he is paid the expense, the reimbursement should be included in gross income and the costs then deducted (Reg. 111, § 29.23 (a)-2 (b)).

5. Acceptable non-reimbursed traveling expenses are those incurred away from home. While the Tax Court has refused to follow the commission's interpretation that "away from home" means away over night, "home" refers to the immediate local area of employment (city or town and suburbs). As long as the taxpayer remains an "employee" these qualifications control non-reimbursed expenditures, (Bell, 13 TC 344, Dec. 17, 192.) but they are not applicable in the case of travel expenses for which the taxpayer is repaid by the employer.

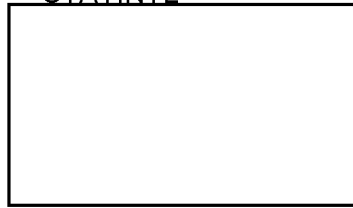
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5. [] indicated that his car was used for transportation between home and office "in the absence of official transportation." There is no indication that there was any absence of public transportation. Normally, commutation is a personal expense (See P 153 of CCH for nine citations), and this is not qualified by the taxpayer's physical disability. Note the case where a deduction was not allowed for the salary of a disabled taxpayer's chauffeur, employed to drive him to and from his place of business (McFarlin, TC memo. op., 1 TCM 703, Dec. 13, 029 (M), P 344.234 CCH). There is no indication that any part of the expenses, either in going to and from work, or in the use of the car during the day, is reimbursed by the employer.

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6. In the absence of other facts, it appears that there is a strong weight of opinion against [] contention. The specific question was put by telephone to the Bureau of Internal Revenue and the disallowance of such deduction was indicated. Two points stand out: commutation expenses are not normally deductible, even where the taxpayer is disabled, and unless other use of the car is "away from home," it must be an expense subject to reimbursement by the employer.

STATINTL



Attach:
Letter dated 11 Feb. 1951
from []

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